IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2370 OF 2006
(For Leave to file Appeal)
in
CRIMINAL APPEAL NO. OF 2006

Rahul Subhash Jadhav ..... Applicant.
(Orig. Complainant)

V/s

Nasir Ayyub Bagwan
and anr. ..... Respondents.
(Respondent No.1 - Orig. Accused)

Mr. Priyal Sarda i/b Mr. I.M. Khairdi for the applicant.

Mrs. M.M. Deshmukh, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 31st October, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of the applicant. None appears on behalf of Respondent No.1, though he is served. It was specifically stated in the notice that the application will be decided finally at the admission stage. In spite of notice being served, none appears on behalf of Respondent No.1.

2. Applicant is challenging the order passed by the Trial Court whereby his complaint was dismissed for default. The

complainant used to remain present on each and every date and on 18/06/2005 when the matter was called out at 5.00 P.M., he was present in Court. However, when the matter was called out, he immediately rushed out to call his advocate and within a few moments he appeared before the Magistrate alongwith his advocate. However, by that time, the impugned order was already passed by the learned Magistrate.

3. In my view, the learned Magistrate ought to have given another chance to the complainant and ought not to have dismissed the complaint filed under section 138 of the Negotiable Instruments Act, particularly when the record indicates that the complainant remained present on almost all dates which were given by the Magistrate.

4. Leave is, therefore, granted. Appeal is taken up for hearing forthwith.

5. For reasons stated hereinabove, appeal is allowed. The impugned order dated 18/06/2005 is set aside. Matter is remanded to the Trial Court. Trial Court shall decide the case as expeditiously as possible and, in any case within a period of one year.

(V.M. KANADE, J.)